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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/445,617	12/08/1999	ALAIN LEMIEUX	7218-000002	1168

7590 04/09/2003

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EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 04/09/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/445,617

Applicant(s)

LEMIEUX, ALAIN

Examiner

Cheryl Juska

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-12 and 14-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-12 and 14-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Response to Amendment

2. Amendment C, submitted as Paper No. 12 on February 6, 2003, has been entered. Claims 2 and 13 have been cancelled, while claims 1, 9, 12, 14-17, 20, and 21 have been amended as requested. New claims 23 and 24 have been added. Thus, the pending claims are 1, 3-12, and 14-24.

3. Amendment C is sufficient to withdraw the 112, 2nd rejections set forth in sections 3-6 of the last Office Action. Additionally, said amendment is sufficient to withdraw the 103 rejection over Leffingwell and Maeda, as set forth in section 8 of the last Office Action.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1, 3-8, 12, 14-19, 23, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,505,960 issued to Leffingwell in view of US 4,830 issued to Maeda, and in further view of US 4,931,477 issued to Shiiki et al. and US 5,035,275 issued to Yamaguchi.

Independent claims 1 and 12 have been amended with the limitations of claims 2 and 13. however, claims 2 and 13 were previously rejected under the cited combination of Leffingwell, Maeda, Shiiki, and Yamaguchi. Thus, claims 1 and 12 are now also rejection under the cited combination of art for the reasons of record.

6. Claims 9, 20, and 21 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Leffingwell, Maeda, Shiiki, and Yamaguchi patents, as applied to claims 1 and 12 above, and in further view of US 5,373,667 issued to Lemieux, for the reasons of record.

7. Claim 11 stands rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Leffingwell, Maeda, Shiiki, and Yamaguchi patents, as applied to claim 1 above, and in further view of US 5,820,475 issued to Luna, for the reasons of record.

Response to Arguments

8. Applicant's arguments submitted with Amendment C have been fully considered, but have not been found persuasive. Applicant traverses the rejections of unamended claims 1 and 12 based upon Leffingwell and Maeda by asserting that they do not teach the presently claimed density and thickness properties (Amendment C, page 6). The Examiner agrees and notes that the rejection has now been amended to include the combination of Leffingwell, Maeda, Shiiki, and Yamaguchi patents, as was previously applied to claims 2 and 13. With respect to this combination of art, applicant traverses by arguing Shiiki and Yamaguchi teach the bead density

and molded density for purposes other than that desired by applicant (Amendment C, page 7).

In response, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).


9. Furthermore, it is argued that it would have been obvious to one of ordinary skill in the art to modify the thickness and density of the underpad according to Leffingwell and Maeda, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 205 USPQ 215. In particular, density and thickness of a foam underpad would directly affect the amount of cushioning properties and weight of said underpad. Therefore, applicant's arguments have been found unpersuasive and the above rejections are maintained.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



CHERYL A. JUSKA
PRIMARY EXAMINER

cj
April 7, 2003